



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lawyers Advantage Title Group, Inc.

File: B-275946; B-276729

Date: April 17, 1997

Conrad C. Ledoux, Esq., Braude & Margulies, for the protester.
Shari Weaver, Esq., Department of Housing and Urban Development, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Propriety of agency determination regarding proper Standard Industrial Classification code assigned to a procurement is not for consideration by the General Accounting Office since conclusive authority over this matter is vested in the Small Business Administration.

DECISION

Lawyers Advantage Title Group, Inc. protests the Department of Housing and Urban Development's (HUD) cancellation of request for proposals (RFP) No. 803R95081800000 for real estate closing agent services in Maryland, Virginia, and Washington, D.C., and HUD's resolicitation of those requirements under solicitation No. H03B97008200000.

We dismiss the protests.

On September 25, 1995, the agency issued solicitation No. 803R95081800000 as a total small business set-aside under Standard Industrial Classification (SIC) code 6531, "real estate agents and managers." The solicitation permitted the selection of multiple awardees.

Several firms, including Lawyers Advantage, submitted proposals by the closing date; best and final offers (BAFOs) were subsequently requested and submitted. By letter dated October 30, 1996, the agency notified the offerors that it intended to award two contracts and identified Lawyers Advantage and another firm as the successful offerors. Offerors' prices were not disclosed.

On February 11, 1997, the agency canceled the solicitation, stating that the SIC code incorporated in the solicitation was erroneous.¹ The agency explains that the duties of a real estate closing agent "are a blend of legal, title and clerical type services," that these activities are not encompassed within SIC code 6351, "real estate agents and managers,"² and that it would be more appropriate to use SIC code 7390, "business services not elsewhere classified." Following cancellation of the RFP, the agency resolicited the requirements under solicitation No. H03B97008200000 using SIC code 7390.

Lawyers Advantage protests that HUD did not have an adequate basis for canceling the RFP because "the solicitation meets the government's actual and minimum needs." More specifically, Lawyers Advantage challenges the agency's determination that SIC code 7390 is more appropriate for this procurement than SIC code 6531, stating: "[t]he issue before the GAO is . . . whether a proper [SIC code] classification was designated."

The Small Business Administration (SBA) has conclusive authority to determine the proper SIC code for a procurement. 15 U.S.C. § 637(b)(6) (1994); K&M Maintenance Servs., Inc., B-239568, Aug. 28, 1990, 90-2 CPD ¶ 167. Under SBA Regulations, the initial determination of the appropriate SIC code is made by the procuring agency, with the right of appeal to the SBA. 13 C.F.R. § 121.902(a), (c) (1996). Since SBA is the sole authority for reviewing SIC code designations, challenges to selected SIC code are not subject to our bid protest jurisdiction. 4 C.F.R. § 21.5(b)(1) (1997).

Regarding the assertion that cancellation of the solicitation was improper, Lawyers Advantage erroneously relies on decisions of this Office which deal with sealed bid procedures. See, e.g., Independent Metal Strap Co., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275; Twehous Excavating Co., Inc., B-208189, Jan. 17, 1983, 83-1 CPD ¶ 42. Where invitations for bids (IFB) are issued under sealed bid procedures, a contracting officer must have a "compelling" reason to cancel a solicitation after bids have been submitted. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). The reason for this is that bids responding to an IFB are publicly exposed, and to reject them and seek new bids would discourage competition.

¹During this period, Lawyers Advantage was performing the solicited closing services under modifications to an existing contract.

²The definition of activities encompassed within SIC code 6531 is: "Establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others."

In contrast, where, as here, a request for proposals (RFP) is issued and negotiated procedures are used, an agency need only have a reasonable basis for canceling the solicitation. See, e.g., Business Communications Sys., Inc., B-218619, July 29, 1985, 85-2 CPD ¶ 103. This Office has specifically stated that an agency's belief that an RFP incorporates an improper SIC code constitutes a reasonable basis for canceling a solicitation. See Empire Moving and Storage Co., B-210139, May 20, 1983, 83-1 CPD ¶ 543. Accordingly, Lawyers Advantage's objection to the agency's cancellation of the RFP because the agency believed the SIC code was improper fails to state a valid basis for protest.

The protest is dismissed.

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